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9
10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

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13 UNITED STATES OF AMERICA,
14 Plaintiff,
15 vs.
16 HARLAN QUESTORIA HIGA,
17 Defendant.

18 **2:12-cr-155-APG-VCF**

19 **GOVERNMENT'S RESPONSE IN**
OPPOSITION TO DEFENDANT'S
MOTION FOR EARLY
TERMINATION OF PROBATION

20 COMES NOW the United States of America, by and through DANIEL G. BOGDEN, United
21 States Attorney, and AMBER M. CRAIG, Assistant United States Attorney, and respectfully
22 requests that Defendant's Motion for Early Termination of Probation be denied.

23 **RELEVANT PROCEDURAL FACTS**

24 On June 6, 2013, Defendant entered a guilty plea to Count Two of the Indictment, charging
him with Possession of a Controlled Substance with Intent to Distribute – THC, in violation of Title
25 21, United States Code, Sections 841(a)(1) and (b)(1)(C). On November 12, 2013, the Court
sentenced Defendant to three years of probation. The remaining counts of the Indictment were
dismissed. Defendant has approximately a year and a half of probation remaining.

26 Defendant moves this Court for early termination of probation based on his compliance with
27 conditions.

28 The Government respectfully requests that the Court deny Defendant's motion since

1 Defendant committed a serious drug crime, was already afforded a substantial reduction to his
 2 sentence when the Court followed the parties' recommendations in the plea agreement, and
 3 sentenced the Defendant to probation, as opposed to a term of imprisonment within the applicable
 4 Guideline range of 37-46 months, and his Probation Officer opposes early termination.

5 **POINTS AND AUTHORITIES**

6 This Court may, after considering certain enumerated factors,¹ terminate a term of supervised
 7 release at any time after the expiration of one year of supervised release "... if it is satisfied that
 8 such action is warranted by the conduct of the defendant released and in the interest of justice. 18
 9 U.S.C. § 3583(e)(1). The burden is on the defendant to demonstrate that early termination is
 10 justified. *United States v. Weber*, 451 F.3d 552, 559 n. 9 (9th Cir. 2006).

11 Among courts that have considered this question, both in this context and in the context of
 12 similar motions for early termination of supervised release, the majority rule appears to be that
 13 "mere compliance with the terms of probation or supervised release is what is expected of
 14 probationers, and without more, is insufficient to justify early termination." *United States v. Caruso*,
 15 241 F. Supp.2d 466, 469 (D.N.J. 2003) (collecting cases); *see also United States v. Miller*, 205 F.3d
 16 1098, 1100-01 (9th Cir. 1999); *United States v. Grossi*, 2011 WL 704364, at *2 (N.D.Cal. 2012);
 17 *United States v. Rivera*, 2015 WL 2344758, at *3 (E.D.Wis. 2015) ("[I]f simply following the rules
 18 were enough, any defendant who avoided revocation could obtain early termination); *United States*
 19 *v. Abdelhady*, 2013 WL 1703775, at *2 (W.D.Pa. 2013) ("[I]t is well-settled that mere compliance
 20 with the terms of supervised release, while commendable, is not sufficiently extraordinary to justify

22 ¹ Those factors are: 18 U.S.C. § 3553(a)(1) nature and circumstances of the offense and history and
 23 characteristics of the defendant; 18 U.S.C. § 3553(a)(2)(B) to afford adequate deterrence to criminal conduct; (a)(2)(C)
 24 to protect the public from further crimes of the defendant; 18 U.S.C. § 3553(a)(4) the kinds of sentences and the
 sentencing range established [under the Sentencing Guidelines]; 18 U.S.C. § 3553(a)(5) any pertinent policy statement
 [under the Guidelines]; 18 U.S.C. § 3553(a)(6) the need to avoid unwarranted sentencing disparities among defendants
 with similar records who have been found guilty of similar conduct. 18 U.S.C. § 3553.

1 early termination.”).

2 Occasionally, a changed circumstance, for instance exceptionally good behavior or a paid
3 amount of restitution, may render a previously imposed term of supervised release too harsh or
4 inappropriately tailored to serve the general punishment goals of 18 U.S.C. § 3553(a). In such cases
5 the Court may discharge a defendant from supervised release. *See United States v. Grimaldi*, 482
6 F.Supp.2d 248 (D. Conn 2007).

7 The Judicial Conference endorses nine criteria for assessing whether early termination
8 should be granted: 1) stable community reintegration; 2) progressive strides toward supervision
9 objectives and in compliance with all conditions of supervision; 3) no aggravated role in the offense
10 of conviction, particularly large drug or fraud offenses; 4) no history of violence; 5) no recent arrests
11 or convictions; 6) no recent evidence of alcohol or drug abuse; 7) no recent psychiatric episodes; 8)
12 no identifiable risk to the safety of any identifiable victim; and 9) no identifiable risk to public
13 safety.

14 In the instant case, the third and ninth factors weigh against Defendant. Defendant and his
15 co-defendant, Jon-Paul Natto, committed a serious drug offense, which was aggravated by
16 Defendant’s possession of multiple firearms. Defendant and Natto grew marijuana and made THC-
17 laced edibles and butter to sell to others and to medical marijuana dispensaries. Inside their home,
18 officers seized 1,182 grams of marijuana, 1,420 grams of THC-laced edibles, 484 grams of THC-
19 laced butter, and equipment used in indoor marijuana grow operations. Inside Defendant’s room,
20 officers seized six firearms.

21 Based on the quantity of drugs found in the residence, Defendant faced a Guideline range of
22 46-57 months without safety valve qualification, and 37-46 months with safety valve qualification.

23 Defendant was afforded numerous concessions in the plea agreement, as well as a substantial
24 sentencing variance, which resulted in his receiving a non-custodial sentence. First, the Government

1 agreed not to pursue a charge of Possession of a Firearm in Furtherance of a Drug Trafficking
2 Crime, in violation of Title 18, United States Code, Section 924(c), which would have called for a
3 sentence of 60 months, to be served consecutive to the sentence imposed for the other counts of the
4 indictment. The Government also agreed not to seek a two-level enhancement for possession of a
5 firearm, pursuant to U.S.S.G. § 2D1.1(b)(1). Additionally, the Government agreed to recommend
6 that Defendant qualified for the two-level “safety valve” reduction, pursuant to U.S.S.G. § 5C1.2,
7 despite his possessing firearms in connection with the offense. Had the Government charged the §
8 924(c) or sought the aforementioned enhancements, Defendant’s Guideline range would have been
9 106-117 months. The Government also agreed to recommend that Defendant only be held
10 accountable for 475 grams of THC, as opposed to all the drugs involved in the offense, and
11 recommended a base offense level of 22, as opposed to 26. Finally, the Court granted a significant
12 sentencing variance from the Guideline range of 37-46 months, and imposed a sentence of three
13 years of probation.

14 Defendant’s sentencing exposure was significantly greater than the sentence ultimately
15 imposed: probation. Given that Defendant already received substantial sentencing concessions, he
16 should not receive further concessions in the form of early termination of supervision simply
17 because he has been compliant.

18 Defendant played an aggravated role in the offense because the majority of the drugs were
19 found in his bedroom, in addition to the six firearms. The nature and circumstances of the crime
20 constitutes a risk to public safety.

21 Defendant’s probation officer opposes early termination. Defendant received a non-custodial
22 sentence that was significantly less than his sentencing exposure. To terminate his probation early
23 would afford him a windfall reduction to his sentence. Continued supervision for the remainder of
24 the term imposed by the Court is reasonable, necessary, and rationally related to deterring criminal

conduct and protecting the public.

CONCLUSION

Based on the forgoing, the Government requests that the Defendant's Motion for Early Termination of Probation be denied.

Respectfully submitted this 2nd day of June, 2015.

Respectfully Submitted,

DANIEL G. BOGDEN
United States Attorney

/s/ *Amber M. Craig*
AMBER M. CRAIG
Assistant United States Attorney